

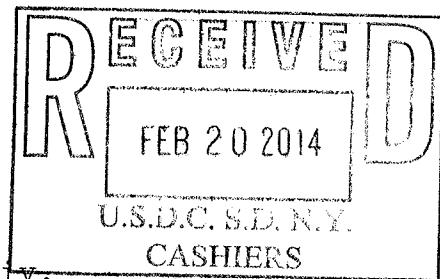
JUDGE ABRAMS

14 CV 1075

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-x

NORTH JERSEY MEDIA GROUP INC., :  
Plaintiff, :  
-against- :  
14 Civ.



SHUTTERSTOCK, INC. AND SS SPV, : ECF Case  
LLC D/B/A BIGSTOCK D/B/A  
BIGSTOCKPHOTO, :  
Defendants. :  
-x

COMPLAINT AND JURY DEMAND

Plaintiff North Jersey Media Group Inc. ("NJMG"), by its undersigned attorneys, for its complaint against defendants Shutterstock, Inc. ("Shutterstock") and SS SPV, LLC d/b/a Bigstock d/b/a BigStockPhoto ("Bigstock"), alleges:

Nature of the Action

1. NJMG is bringing this action to enforce its copyright in its iconic photograph of three firefighters raising the American flag at the ruins of the World Trade Center site on September 11, 2001 (the "Flag Raising Photograph").

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over the claim in this action pursuant to 28 U.S.C. §§ 1331 and 1338 because it arises under the Copyright Act, 17 U.S.C. § 101 et seq.

3. Upon information and belief, venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(a).

4. Defendants are subject to the personal jurisdiction of this Court pursuant to N.Y. C.P.L.R. § 301 based upon their place of business being in this state.

Parties

5. NJMG is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business in Woodland Park, New Jersey. NJMG is engaged in the business of news reporting. Its two daily publications, The Record and Herald News, have a daily circulation of approximately 151,000 and a Sunday circulation of approximately 175,000. In addition, NJMG publishes more than forty weekly community newspapers with a combined circulation of approximately 630,000. Its twelve magazines have a circulation of approximately 350,000. Its website, [www.northjersey.com](http://www.northjersey.com), has more than 11.5 million page views per month, and its other website, [www.bergen.com](http://www.bergen.com), has approximately 750,000 page views per month.

6. Upon information and belief, Shutterstock is a corporation incorporated under the laws of the State of Delaware, with its principal place of business in New York, New York.

7. Upon information and belief, Bigstock is a limited liability company organized under the laws of the State of Delaware with its principal place of business in New York, New York. Upon information and belief, Shutterstock owns Bigstock.

NJMG's Copyright

8. On September 11, 2001, an employee of NJMG, acting within the scope of his employment, took the Flag Raising Photograph. A copy is annexed as Exhibit A. The Flag Raising Photograph has become an iconic image that has received international attention. Because an employee of NJMG took the Flag Raising Photograph while acting within the scope of his employment, it is a "work made for hire" as defined by Section 101 of the Copyright Act. NJMG is therefore the sole owner of the copyright in the Flag Raising Photograph.

9. In 2002, NJMG entered into a license agreement with the United States Postal Service ("USPS") which granted the USPS a non-exclusive right to create and sell stamps or other philatelic products bearing the image of NJMG's Flag Raising Photograph.

Defendants' Infringing Acts

10. Defendants have, without permission, sold copies of the USPS stamp, which bear the image of NJMG's Flag Raising Photograph.

11. Defendant Shutterstock sold copies of the USPS stamp bearing NJMG's Flag Raising Photograph through its website, [www.shutterstock.com](http://www.shutterstock.com). Upon information and belief, Shutterstock obtained its first copy from a user named "catwalker."

12. Defendant Bigstock sold copies of the USPS stamp bearing NJMG's Flag Raising Photograph through its website, [www.bigstockphoto.com](http://www.bigstockphoto.com). Upon information and belief, Bigstock obtained its first copy from a user named "carolinasmith."

13. Upon information and belief, Shutterstock and Bigstock are not jointly and severally liable for any damages resulting from the acts alleged in this complaint.

CLAIM FOR RELIEF  
(Copyright Infringement - 17 U.S.C. § 501)

14. NJMG repeats the allegations in paragraphs 1 through 13 as if set forth in full.

15. NJMG owns, registered and received the United States Certificate of Copyright Registration No. VA 1-014-297 for the copyright in the Flag Raising Photograph (the "Flag Raising Copyright"). A copy of the United States Certificate of Copyright Registration is annexed as Exhibit B.

16. NJMG's Flag Raising Copyright is valid and enforceable.

17. Defendants have infringed NJMG's Flag Raising Copyright by making and distributing unauthorized copies of it, or a derivative work of it, in violation of 17 U.S.C. § 501.

18. Defendants' acts have irreparably damaged and, unless enjoined, will continue to irreparably damage NJMG. NJMG has no adequate remedy at law for these wrongs and injuries. NJMG is, therefore, entitled to a preliminary and/or permanent injunction restraining and enjoining defendants and their agents, servants, employees, and attorneys and all persons acting in concert with them, from infringing NMJG's Flag Raising Copyright.

19. Defendants have willfully infringed NJMG's Flag Raising Copyright.

20. NJMG is entitled to recover damages sustained as a result of defendants' unlawful conduct, including defendants' profits, or alternatively, at NJMG's election, statutory damages.

WHEREFORE, NJMG demands judgment:

A. Preliminarily and/or permanently enjoining defendants, their agents, servants, employees, and attorneys and all those acting in concert with them from infringing NJMG's Flag Raising Copyright in violation of 17 U.S.C. § 501;

B. Awarding NJMG Shutterstock's profits, or alternatively, at NJMG's election, statutory damages, as a

result of Shutterstock's infringement of NJMG's Flag Raising Copyright;

C. Awarding NJMG Bigstock's profits, or alternatively, at NJMG's election, statutory damages, as a result of Bigstock's infringement of NJMG's Flag Raising Copyright;

D. Awarding NJMG its costs in this action, including its reasonable attorneys' fees pursuant to 17 U.S.C. § 505; and

E. Granting such other and further relief as to this Court seems just and proper.

Jury Trial Demand

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, NJMG hereby demands a trial by jury of all issues that are so triable.

Dated: New York, New York  
February 20, 2014

DUNNEGAN & SCILEPPI LLC

By William Dunegan  
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wd@dunnegan.com  
Richard Weiss (RW4039)  
rw@dunnegan.com  
Attorneys for Plaintiff  
North Jersey Media Group Inc.  
350 Fifth Avenue  
New York, New York 10118  
(212) 332-8300

**Exhibit A**



## **Exhibit B**

**Additional Certificate (17 U.S.C. 706)**  
**Certificate of Registration**



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

**FORM VA**  
 For a Work of the Visual Arts  
 UNITED STATES COPYRIGHT OFFICE

VA 1-014-297

61000018142974  
 RECORDING DATE OF REGISTRATION

10 05 2001  
 Month Day Year

*Maria L. Pallante*

Register of Copyrights, United States of America

**DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.**

**NATURE OF THIS WORK ▼ See Instructions**

**TITLE OF THIS WORK ▼**

Three Firefighters Raising The American Flag on the Ruins of the World Trade Center

Photograph

**PREVIOUS OR ALTERNATIVE TITLES ▼**

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Page ▼

**NAME OF AUTHOR ▼**

a North Jersey Media Group Inc.

Was this contribution to the work a "work made for hire"?

Yes  
 No

Author's Nationality or Domicile

Name of County

OR Citizen of ► New Jersey

Domiciled in ► New Jersey

**DATES OF BIRTH AND DEATH**  
 Year Born ▼ Year Died ▼

Was This Author's Contribution to the Work Anonymous?  Yes  No If the answer to either of these questions is "Yes," see detailed instructions.  
 Pseudonymous?  Yes  No

**NOTE**

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "author" of that part, and leave the space for date of birth and death blank.

**NATURE OF AUTHORSHIP Check appropriate box(es). See Instructions**

<input type="checkbox"/> 3-Dimensional sculpture	<input type="checkbox"/> Map	<input type="checkbox"/> Technical drawing
<input type="checkbox"/> 2-Dimensional artwork	<input checked="" type="checkbox"/> Photograph	<input type="checkbox"/> Text
<input type="checkbox"/> Reproduction of work of art	<input type="checkbox"/> Jewelry design	<input type="checkbox"/> Architectural work

**NAME OF AUTHOR ▼**

b Was this contribution to the work a "work made for hire"?

Yes  
 No

Author's Nationality or Domicile

Name of County

OR Citizen of ►

Domiciled in ►

**DATES OF BIRTH AND DEATH**  
 Year Born ▼ Year Died ▼

Was This Author's Contribution to the Work Anonymous?  Yes  No If the answer to either of these questions is "Yes," see detailed instructions.  
 Pseudonymous?  Yes  No

**NATURE OF AUTHORSHIP Check appropriate box(es). See Instructions**

<input type="checkbox"/> 3-Dimensional sculpture	<input type="checkbox"/> Map	<input type="checkbox"/> Technical drawing
<input type="checkbox"/> 2-Dimensional artwork	<input type="checkbox"/> Photograph	<input type="checkbox"/> Text
<input type="checkbox"/> Reproduction of work of art	<input type="checkbox"/> Jewelry design	<input type="checkbox"/> Architectural work

**3**

a Year in Which Creation of This Work Was Completed  
 2001  
This information must be given in all cases.

b Date and Nation of First Publication of This Particular Work  
 Complete this information Month ▶ 9 Day ▶ 12 Year ▶ 2001  
 ONLY if this work has been published.  
 U.S.A.  Nation

**4**

See instructions before completing this space.

**COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼**

North Jersey Media Group Inc.  
 150 River Street  
 Hackensack, N.J. 07601-1172

Transfer if the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

OCT 05 2001

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

OCT 05 2001

FUNDS RECEIVED

**MORE ON BACK ▶** • Complete all applicable spaces (numbers 5-8) on the reverse side of this page.

• See detailed instructions.  
 • Sign the form at the bottom.

DO NOT WRITE HERE

Page 1 of 2 pages

EXAMINED BY 5147

FORM VA

CHECKED BY \_\_\_\_\_

---

CORRESPONDENCE  
Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

**DO NOT WRITE ABOVE THIS LINE, IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.****PREVIOUS REGISTRATION** Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

- Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼
- This is the first published edition of a work previously registered in unpublished form.
  - This is the first application submitted by this author as copyright claimant.
  - This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

**5****DERIVATIVE WORK OR COMPILATION** Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

- a. Preexisting Material: Identify any preexisting work or works that this work is based on or incorporates. ▼

- b. Material Added to This Work: Give a brief, general statement of the material that has been added to this work and to which copyright is claimed. ▼

**a**  
See instructions  
before completing  
this space.**b****DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

**a****b****7****CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

Sally A. Steffen, Esquire  
 Ballard Spahr Andrews & Ingersoll, LLP  
 1735 Market Street, 51st Floor  
 Philadelphia, PA 19103  
 Area code and daytime telephone number ▶ (215) 864-8222  
 Email ▶ steffen@ballardsphar.com

Fax number ▶ (215) 864-8999

**CERTIFICATION\*** I, the undersigned, hereby certify that I am the

check only one ▶

- {  Author  
 other copyright claimant  
 owner of exclusive right(s)

or authorized agent of North Jersey Media Group, Inc.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

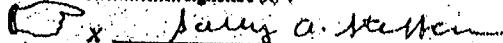
of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Sally A. Steffen

Date ▶ 9/28/01

Handwritten signature DO V


Certificate  
will be  
mailed in  
window  
envelope  
to this  
address:

Name ▼

Name ▼ Sally A. Steffen, Esquire	Number/Street/Apt ▼ Ballard Spahr Andrews & Ingersoll, LLP
City/State/ZIP ▼ Philadelphia, PA 19103	1735 Market Street, 51st Floor

• Complete all necessary spaces  
 • Sign your application in space 8  
 • PRINT ON ONE SIDE OF PAPER ONLY  
 1. Application form  
 2. Nonrefundable filing fee in check or money order payable to Register of Copyrights  
 3. Any copyrighted material  
 4. Copyright deposit  
 Library of Congress  
 Copyright Office  
 101 Independence Avenue S.E.  
 Washington, D.C. 20559-6000

**9**

17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 403, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.  
 June 1990—100,000  
 Web REV: June 1990

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